

STATE OF MICHIGAN
COURT OF APPEALS

VINCE GILL TOURS, INC., KEITH FOWLER
PROMOTIONS, INC., VARILITE
INTERNATIONAL, INC., CPL, INC., and
VARILITE, INC.,

UNPUBLISHED
March 11, 2003

Plaintiffs,

and

CITY OF SAGINAW,

Plaintiff-Appellant,

v

No. 238351
Saginaw Circuit Court
LC No. 99-030263 CK

T.H.E. INSURANCE COMPANY,

Defendant-Appellee,

and

ALLIED SPECIALITY INSURANCE, INC.,

Defendant.

Before: Kelly, P.J., and White and Hoekstra, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent.

Plaintiff City of Saginaw does not seek to recover under the policy as an additional insured. Rather, plaintiff seeks to recover based on defendant's liability to its primary insured, Fowler.

The workers' compensation exclusion is inapplicable because plaintiff does not seek indemnification as an additional insured for the injured workers' compensation claim against it. Further, plaintiff sought reimbursement from Fowler based on an indemnification agreement, not based on any theory that the injured worker was Fowler's employee.

It is of no consequence that the underlying recovery of the injured worker was for workers' compensation benefits because the insured's (Fowler's) liability was under an "insured contract" and not under a workers' compensation law. Couch, Insurance 3rd, § 129:5, pp 12-13, does not counsel a different result. That section refers to indemnification claims by third-parties against the employer, a situation not involved here.

I would reverse.

/s/ Helene N. White